

SUPREME COURT OF ARKANSAS

No. 09-1194

KIARA SMITH
APPELLANT

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
APPELLEE

Opinion Delivered October 6, 2011

PRO SE APPEAL FROM THE
JEFFERSON COUNTY CIRCUIT
COURT, CV 2009-588, HON. JODI
RAINES DENNIS, JUDGE

APPEAL DISMISSED.

PER CURIAM

Appellant Kiara Smith appeals an order of the Jefferson County Circuit Court denying his petition for writ of habeas corpus. For reversal, appellant argues that his sentence is illegal. Because the circuit court did not have jurisdiction of the matter, we dismiss the appeal.

On July 8, 1996, appellant pled guilty to robbery and was sentenced to twenty years' imprisonment, with ten years of the twenty-year sentence suspended. Appellant was paroled in 2002. On August 15, 2006, appellant pled guilty to violating the terms of his suspended sentence and was sentenced to forty-eight months' imprisonment.

While incarcerated in Jefferson County, appellant filed a petition for writ of habeas corpus, alleging that his sentence was illegal because the circuit court did not have the authority to revoke his suspended sentence in 2006, when that sentence allegedly ran concurrently with an unsuspended portion of his 1996 sentence. The court denied appellant's petition, and appellant brings this appeal.



Cite as 2011 Ark. 414

An appeal of the denial of postconviction relief, including an appeal from an order that denied a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Waller v. Norris*, 2011 Ark. 168 (per curiam); *Buckhanna v. Hobbs*, 2011 Ark. 119 (per curiam); *Davis v. State*, 2011 Ark. 6 (per curiam); *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam).

Any petition for writ of habeas corpus to effect the release of a prisoner is properly addressed to the circuit court in the county in which the prisoner is held in custody, unless the petition is filed pursuant to Act 1780 of 2001, codified at Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006), in which case the petition is properly filed pursuant to Arkansas Code Annotated section 16-112-201(a) in the court where the judgment of conviction was entered. A circuit court does not have jurisdiction to release on a writ of habeas corpus a prisoner not in custody in that court's jurisdiction. *Waller*, 2011 Ark. 168; *Buckhanna*, 2011 Ark. 119; *Hill v. State*, 2010 Ark. 102 (per curiam); *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam) (citing *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991)).

Here, the records of the Arkansas Department of Correction verify that appellant is no longer incarcerated. Thus, we do not reach the merits of appellant's argument and dismiss the appeal because the Jefferson County Circuit Court can no longer grant the relief requested by appellant. *Waller*, 2011 Ark. 168; *Buckhanna*, 2011 Ark. 119. Even if appellant's petition had merit and the circuit court erred in dismissing it, appellant cannot now prevail on appeal. *Waller*, 2011 Ark. 168; *Buckhanna*, 2011 Ark. 119. Accordingly, the appeal is dismissed.



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Appeal dismissed.